THAM SOO NOOI & ANOR.

v.

TAM SIEW YEE

HIGH COURT MALAYA, SEREMBAN
MOHD. YUSOF ABDUL RASHID J
[CIVIL SUIT NO. 45 OF 1979]
17 OCTOBER 1981

LAND LAW: *Encroachment - Part of the house encroached - Both parties unaware of the fact at the beginning - Defence of statute barred - Doctrine of equitable estoppel - When applicable - Claim for loss of income and order to pull down the house - Section 9(1), Limitation Ordinance 1953.*

The plaintiffs and the defendant who are sisters and brother are the registered proprietors of Lots 1096 and 1095 respectively. Their father who was the registered proprietor of Lot 1096 transferred the said land to the plaintiffs before his death in 1960. On his death, the title deeds to both the lands were kept in the custody of the plaintiffs' mother but both lands were then managed by the defendant. In 1978 the title deed to Lot 1096 was handed to the plaintiffs by the mother. Sometime in 1961, while the lands were under the management of the defendant, it was replanted. Sometime in 1964 the defendant built a house, part of which encroached onto the plaintiffs' land.

The plaintiffs applied for a Court order to compel the defendant to pull down that portion of the defendant's house which had been built on the plaintiffs' land without their permission, claimed damages for the lost use of the area thus encroached and for loss of income due to the defendant having felled or caused to have felled about 55 rubber trees on the plaintiffs' land.

The defendant disputed the plaintiffs' allegations and pleaded the Statute of Limitation in that the claim for possession of the said land was made after the cause of action had lapsed and that the doctrine of equitable estoppel applied since he had expended money in building the house in 1964 with the consent of the plaintiffs.

Held:

[1] The defendant was a trespasser and had no right to occupy the land. Protection under the Limitation Ordinance is available only if the defendant had succeeded in satisfying the Court that he had a cause of action in equity or that he had acquired an equitable interest in the land.

[2] The defendant could not assert that he had a cause of action against the plaintiffs founded on mere occupation of that portion of the land and he cannot avail himself to the protection under the ordinance.

[3] The doctrine of equitable estoppel only applies if the plaintiffs had induced or encouraged the defendant to build that part of the house. In this instant case there was none and the doctrine of equitable estoppel does not apply.

[4] The defendant was ordered to pull down that part of the house which had encroached and to pay compensation to the plaintiffs for the loss of income.

[Judgment for the plaintiffs with costs.]

Case referred to:
Ooi Ho Cheng v. Grace Joseph & Ors. [1975] 1 MLJ 168

Legislation referred to:
Limitation Ordinance 1953, s. 9(1)

For the plaintiffs - K.C. Wong
For the defendant - S.K. Lingam

(Digest Form Only)

Also found at [1982] CLJ 163